

**Law Offices of Bruce W. Minsky, P.C.**

112 Brick Church Road  
New Hempstead, NY 10977  
Telephone: (646) 234-7006; (212) 956-3123  
Facsimile: (702) 973-6607 (Not for Litigation Purposes)  
E-mail: dovzeev@aol.com

MEMO E-100.11.03

Bruce W. Minsky, Esq.

Member of the California, Connecticut and New York Bars

February 14, 2008

Honorable Kenneth M. Karas, USDJ  
United States District Court, Southern District of New York  
300 Quarropas Street, Chambers 533  
White Plains, New York 10601-4150

Re: SwordPen.Com Inc. v. Henry Holt and Co., et al.  
Case No.: 07 CIV 10955 (KMK)

<b>USDS SDNY</b>
<b>DOCUMENT</b>
<b>ELECTRONICALLY FILED</b>
<b>DOC #:</b> _____
<b>DATE FILED:</b> _____

Dear Judge Karas:

I am the attorney for plaintiff SwordPen.Com, Inc. ("SwordPen"). Being in receipt of the February 4, 2008 correspondence from Davis Wright Tremaine, LLP ("Defendants' Correspondence"), attorneys for the defendants Henry Holt and Co. ("Henry Holt") and Karen Katz ("Katz"), as well as ensuring compliance with paragraph II A of your honors Individual Rules of Practice, this correspondence with serve as the requisite opposition and reply. Note that the undersigned did coordinate with your honor's chambers to extend the time to respond to February 15, 2008.

For background information, and as detailed in the underlying Complaint and Demand for Jury Trial ("Complaint"), Zev Lewinson ("Lewinson"), an author of numerous children stories, created/authored a manuscript entitled *What Do You Call It?*, the manuscript having been slightly amended/modified since the U.S Copyright Office Registration, numbered TXu 928-388 and dated December 2, 1999 (the copyrighted manuscript and subsequent modifications/amendments hereinafter jointly referred to as the "Lewinson Work"). The plaintiff SwordPen, on or about August 1, 2007, became the assignee of the Lewinson Work.

At the outset, contrary to the allegations in the Defendants' Correspondence, the submission of the Lewinson Work to Henry Holt, as detailed in the Complaint, was not, by any means, 'unsolicited'. Lewinson established contact with Henry Holt and spoke with David Rohlfing ("Rohlfing"), an editor, who clearly instructed Lewinson how to submit the Lewinson Work as an 'unagented author'. Attached are instructions, from Henry Holt, that were provided to Lewinson for the submission of the Lewinson Work. A cover letter, addressed to Rohlfing, accompanied the eventual submission ("Submission"). The instructions and cover letter are attached hereto as Exhibit "A". While it may be correct to say that a publishing house does not entertain unsolicited manuscripts, the Submission herein was authorized, expected and received by Henry Holt.

Additionally, Lewinson spoke with Rohlfing on many occasions prior and subsequent to the Submission. One of the conversations, Lewinson detailed how he sought to promote a concept of 'world peace' and, on many occasions, contacted the United Nations and embassies in order to get the proper child's name and themed word in the foreign language of each country. Lewinson also explained to Rohlfing that he planned to dedicate the book to the United Nations and world peace. Interestingly enough, Katz claims the United Nations reference in the 'Katz Book' (*the term as defined in the Defendants' Correspondence*) was her publisher's idea (See e-mail exchange between Katz and Lewinson attached hereto as Exhibit "B").

**Law Offices of Bruce W. Minsky, P.C.**  
*Attorneys at Law*

Honorable Kenneth M. Karas  
February 14, 2008  
Page 2

As a side note, while the Defendants' Correspondence includes the copyrighted version of the Lewinson Work, the correct version of the Submission is a slightly amended version which is attached hereto as Exhibit "C".

Four to five months after the Submission date, approximately mid-year 2000, and after numerous conversations with Rohlfing, Lewinson received a letter from Henry Holt, signed by Rohlfing, attached hereto as Exhibit "D" ("Henry Holt Letter") stating the Submission was 'not suitable for their list', the term list meaning a list of topics that the publisher is planning to publish. Additionally, the Henry Holt Letter clearly states that they had 'a chance to review the [Submission]' and gave it careful consideration. The Henry Holt Letter further states that they would be happy to return the Submission. The Submission, though, was never returned. For the Defendants' Correspondence to state that the defendants vigorously deny that they had access to the Submission is wholly inaccurate.

Of interesting note, while the Defendants' Correspondents attempts to show that there was a gap of seven years between the Submission and the publishing of the Katz Book, the truth is far different. Henry Holt, in a letter to Lewinson's then attorneys, dated October 11, 2006, states that Katz conceived the idea in the fall of 2001 (See letter attached hereto as Exhibit "E"). And, while Katz claims to have gotten ideas from Henry Holt, it is very likely that the real gap in time was a mere one year. Even more striking, since Henry Holt never sent back the Submission, the Lewinson Work was more likely readily available to Henry Holt during all relevant times related to Katz's 'conceived idea'.

It is obvious that Henry Holt had access to and reviewed the Lewinson Work. It is also obvious that Henry Holt, at the very least, provided Katz with ideas for the Katz Book. It is further obvious that Lewinson had provided Henry Holt with ideas and creative formation for the Lewinson Work, the same, having been part of the Submission.

Notwithstanding the defendants allegation, the cursory similarities, those already identified prior to any discovery inquiry, are as follows:

(a) Both stories revolve around the concept of a child in a country that says a themed-translated word in the language of that country and has a graphic corresponding illustration relating to the county and/or its culture. In other words, \_\_\_\_\_ lives in \_\_\_\_\_ and says \_\_\_\_\_;

(b) Out of the eleven countries/child entries in the Katz Book, 6 (approximately 55%) are exact matches of countries in the Lewinson Work (America/United States; Japan/Japan; Australia/Australia; Mexico/Mexico; China/China; and, Russia/Russia);

(c) Cursory examples of content similarities are:

(i) In the Katz Book, for the China entry, a girl and a boy are sitting on the bank of a river (perhaps the famous Yangtze River) listening to their grandmother while she cuddles a baby on her lap; a river rather than the more famous landmark, the Great Wall of China. In the Lewinson Work, the China entry has a child is sailing on the Yangtzee River as he listens to stories from his Grandfather;

(ii) In the Katz Book, for the Australian entry, a girl plays hide and seek with her friends in Australia as a boy is napping in the picture. In the Lewinson Work, a Swedish entry has a boy dreaming that he plays hide and seek with his friends;

**Law Offices of Bruce W. Minsky, P.C.**  
*Attorneys at Law*

Honorable Kenneth M. Karas, USDJ  
February 14, 2008  
Page 3

(iii) In the Katz Book, for the Russian entry, a boy is playing in the snow. In the Lewinson Work, for the Russian entry, a boy enjoys playing in the snow;

(iv) In the Katz Book, the Japan entry has children riding bikes. In the Lewinson Work, the Japan entry has the child riding her tricycle.

(d) In the Katz Book, in the penultimate page, the author asks the children "Can You Say Peace?" and illustrates kid faces from all over the world. In the Lewinson Work, in the penultimate page the author asks "What Do You Call It?" and illustrates "kid faces" from all over the world;

(e) In the Katz Book, the final page has an illustration of a globe of the planet earth, with children standing all over the planet, with smiling faces, dressed in the clothes of their native culture and land. There is also a dove at one of the picture flying by. In the Lewinson Work, the final page describes an illustration of a globe of the planet earth, with children standing all over the planet, having smiling faces and dressed in their cultures clothes. There is also described a dove at one end; and,

(f) The word "It" in the title of the Lewinson Work, while referring to a "pacifier", is obviously in place of the word 'peace' as indicated by the ultimate finale of the Lewinson Work - "Paci on Earth" (which is cleverly in place of the famous phrase, "Peace on Earth"). It is obvious that title is a derivative of 'What Do You Call Peace'. That is noticeably similar to the title of the Katz Book, "Can You Say Peace"

What makes the above similarities even more striking is the very proof, as stated before, that Katz, from her own words, claimed she got ideas from her publisher, Henry Holt, the same publisher that previous to the Katz Book, entertained and reviewed the Lewinson Work, approximately one year before the idea for the Katz Book. Such direct casual connections have the potential, through discovery, to disclose even more incriminating and infringing evidence. The culmination of the similarities represents more than an array of logical coincidences. In fact, the similarities speak of a common source, the Lewinson Work.

There is a clear factual dispute here, one that satisfies the initial evidentiary burdens, which can only be resolved through the exchange of discovery and proceeding in the instant matter. In this regard, any dispositive motion at this juncture is premature.

In light of the above, it is respectfully requested that this Court: (i) deny permission to the Defendants to file a motion to dismiss the Complaint, or in the alternative for summary judgment.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

Bruce W. Minsky

*The Court will hold a pre-motion conference on March 11, 2008, at 11:45. All deadlines are stayed until then.*

BWM/jm

cc: Robert D. Balin, Esq., Davis Wright Tremaine, LLP Via Overnight Mail

SO ORDERED

*[Signature]*  
KENNETH M. KARAS U.S.D.J.

2/19/08